established a trade and carries it on under a given name, that some other person should assume the same name, or the same name with a slight alteration in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name and the same principle applies to the use of corporate names." *Lee* v. *Haley*, L. R. 5 Ch. 155. The above principle is shortly and aptly expressed in *Cady* v. *Schultz*, 19 R. I. 193, as follows: "No man has a right to sell his own goods as the goods of another." In accord with the above are *Christy* v. *Murphy*, 12 How. Pr. (N. Y.) 77; *Woodward* v. *Lazar*, 21 Cal. 449; *Busch* v. *Gross*, 71 N. J. Eq. 508; *Martell* v. *St. Francis Hotel Co.*, 51 Wash. 375; *Ball* v. *Best*, supra, and *Dewilt* v. *Mathey & Co.*, 18 Ky. L. Rep. 257. In the following cases an injunction was denied, but they are probably distinguishable from the principal case on the ground that there was no injury shown from the use of a similar name. *Black Rabbit Association* v. *Munday*, 21 Abb. N. C. 99; *Messer* v. *Fadettes*, 168 Mass. 140; *Supreme Lodge, K. of P.* v. *Improved Order, K. of P.*, 113 Mich. 133; *La Tosca Club* v *La Tosca Club*, 23 App. D. C. 96.

EVIDENCE—BOOKS OF ACCOUNT AS IMPEACHING EVIDENCE.—In an action for personal injuries a witness for the plaintiff accounted for his presence at the place of the accident by stating that he was hauling a load of lumber to another town which he delivered the next day at a store and received credit for it. In order to contradict and disprove this the defendant called the manager of the store who, by using the account books of the store, testified that its books showed no delivery of lumber by the witness at that time. *Held*, (MCCARTY, C. J., dissenting) that this was reversible error, that the account books of third parties as to transactions with another, both of whom are strangers to both litigants, is hearsay evidence and therefore inadmissible. *Shepherd* v. *Denver & R. G. R. Co.*, (Utah 1915) 145 Pac. 296.

While a witness may not as a rule be contradicted or impeached on collateral or immaterial matters brought out in cross-examination, yet it is competent for a party to produce evidence to contradict statements made by an adverse witness in regard to material matters which tended to corroborate and strengthen his testimony, even though the statements do not relate directly to the subject-matter of the litigation. *Chicago City Ry. Co.* v. *Allen*, 169 Ill. 287; *East Tenn. Va. & Ga. Ry. Co.* v. *Daniel*, 91 Ga. 768; *People* v. *DeFrance*, 104 Mich. 563; *James* v. *State*, 133 Ala. 208; *Chesebrough* v. *Conover*, 140 N. Y. 382. Conceding, as was done in the principal case, the materiality of the fact testified to, the difficult question is the competency of the evidence offered to contradict and impeach the witness in this regard. A witness may be contradicted on material matter by any written statement he may have made, as a letter or affidavit (*Foster* v. *Worthing*, 146 Mass. 607; *Western Mfg. Mut. Insurance Co.* v. *Boughton*, 136 Ill. 317; *Anthony* v. *Jones*, 39 Kan. 529; *Tucker* v. *U. S.*, 151 U. S. 164) or by books of account evidencing transactions between the parties to the suit (*Cross & Brigham* v. *Willard's Est.*, 46 Vt. 73; *Terry* v. *McNeil*, 58 Barb. (N. Y.) 241; *Bushnell* v. *Simpson*, 119 Cal. 658). But as a general rule the books of account of a

third person evidencing transactions between him and one of the parties to the suit are not admissible for purposes of contradiction, being hearsay as to the other party litigant. *Chandler* v. *Pomeroy,* 87 Fed. 262; *Watrous* v. *Cunningham,* 65 Cal. 410; *Mercier* v. *Copeland,* 73 Ga. 636; *Schwartz* v. *Southerland,* 51 Ill. App. 175. *A fortiori* are they not admissible where they evidence dealings with parties both of whom are strangers to both litigants. *Cornville* v. *Brighton,* 35 Me. 141; *Masters* v. *Marsh,* 19 Neb. 458; *Rielly* v. *English,* 77 Tenn. 16. Where, however, a witness testifies that he has made or seen an entry or otherwise refers to specific books of account to strengthen his testimony, or declares his knowledge of facts to which he testifies is derived from certain books, those books, if identified as the ones spoken of, are admissible to contradict his testimony, whether they are books of a stranger or not. *Davenport* v. *Cummings,* 15 Ind. 219; *City of Ripon* v. *Bittel,* 30 Wis. 614; *Baker & Sons* v. *Sherman,* 71 Vt. 439; *Gilmour* v. *Heinze,* 85 Tex. 76. In the principal case of Judge McCARTY takes the view that the witness referred specifically to a credit in these account books which the witness saw and "assisted in making." The majority opinion takes the contrary view that the entry books of account were not in any way referred to by the witness. In view of these facts it would seem that the court divided not on the rule of evidence involved but rather on its application to the facts at hand.

INSURANCE—RECOVERY OF PREMIUMS PAID.—Defendant company, on July 23, 1909, issued a twenty-year life insurance policy to plaintiff, the annual premium of $2,860 to be payable quarterly with an allowance of thirty days' grace on each installment. The premiums due were regularly paid by the insured until January 23, 1912, but the payment due at that date was not tendered within the period of grace allowed. Six days after the expiration of the thirty days of grace, the insured tendered the premium due but was notified that the policy had been forfeited by his failure to comply with the conditions for payment of premiums. There were no stipulations in the policy as to forfeiture for default in the payment of premiums. Plaintiff brought action to recover $7,423, the amount of the premiums he had previously paid. *Held,* that since the company had attempted to terminate the policy, the insured could consent to the rescission and was entitled to a return of the premiums paid, no forfeiture having resulted. *Titlow* v. *Reliance Life Ins. Co.,* (Pa. 1914) 92 Atl. 747.

The court was led to this conclusion by the argument that a policy of life insurance is not a contract for one year with the privilege of renewal from year to year, but is rather an entire and indivisible contract, any breach of which by the insured does not amount to a forfeiture (in the absence of a contract stipulation to that effect) but operates only as a breach of the contract,—a breach, which, as in ordinary contracts, the insurer could either waive or adopt as ground for a rescission of the contract by placing the insured in statu quo and returning the premiums already paid. The initial proposition in this reasoning,—that a life insurance policy evidences not a contract from year to year but rather a continuous and indivisible obligation,—has been accepted by the weight of authority as a rule of construction for